

AMENDATORY SECTION (Amending Order 89-26, filed 10/17/89, effective 11/17/89)

**WAC 173-321-010 Purpose and authority.** (1) The department is directed by the Model Toxics Control Act to provide grants up to ~~((fifty))~~ sixty thousand dollars to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest groups. These grants shall be used to facilitate public participation in the investigation and remediation of a release or threatened release of a hazardous substance and to facilitate public participation in the implementation of the state's solid and hazardous waste management priorities.

(2) The purpose of this chapter is to set forth eligibility criteria and funding requirements for grant projects.

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**WAC 173-321-020 Definitions.** As used in this chapter:

(1) "Department" means the department of ecology.

(2) "Director" means the director of the department of ecology or such person authorized to act for the director.

(3) "Emergency" means an occurrence warranting public participation which occurs after the deadline for grant applications and before the opening of a new grant application period, such as:

(a) An unforeseen release of a hazardous substance at an existing site or a newly discovered site;

(b) An unanticipated decision by the department concerning remedial action at a site or publication of a remedial investigation, feasibility study or risk assessment; or

(c) Discovery of a technical assistance need which could not have been foreseen before the grant application deadline.

(4) "Emergency grant" means a public participation grant in the hazardous substance release category for an emergency as defined in this section.

(5) "Expendable personal property" means all tangible personal property other than nonexpendable personal property.

~~((4))~~ (6) "Facility" means:

(a) Any building, structure, installation, equipment, pipe

or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, waste pile, pond, lagoon, impoundment, ditch, landfill, tank, storage container, motor vehicle, rolling stock, vessel, or aircraft; or

(b) Any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

~~((+5+))~~ (7) "Grant applicant" means any person requesting a public participation grant.

~~((+6+))~~ (8) "Hazardous substance" means:

(a) Any dangerous or extremely hazardous waste as defined in RCW 70.105.010 (5) and (6) or any dangerous or extremely hazardous waste designated by rule pursuant to chapter 70.105 RCW;

(b) Any hazardous substance as defined in RCW 70.105.010(14) or any hazardous substance as defined by rule pursuant to chapter 70.105 RCW;

(c) Any substance that, on March 1, 1989, is a hazardous substance under 101 (14) of the Federal Cleanup Law, 42 U.S.C. Sec. 960(14);

(d) Petroleum or petroleum products; and

(e) Any substance or category of substances including solid waste decomposition products, determined by the director by rule to present a threat to human health or the environment if released into the environment. Except that:

The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local laws.

~~((+7+))~~ (9) "Hazardous waste management priorities" as defined in RCW 70.105.150 are the priorities in the management of hazardous waste which should be followed in descending order as applicable:

(a) Waste reduction;

(b) Waste recycling;

(c) Physical, chemical, and biological treatment;

(d) Incineration;

(e) Solidification/stabilization treatment;

(f) Landfill.

~~((+8+))~~ (10) "Nonexpendable personal property" means tangible personal property having a useful life of more than one year and an acquisition cost of three hundred dollars or more per unit.

~~((+9+))~~ (11) "Not-for-profit public interest organization" means any corporation, trust, association, cooperative, or other organization which:

(a) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(b) Is not organized primarily for profit; and  
(c) Uses its net proceeds to maintain, improve, and/or expand its operations.

~~((+10+))~~ (12) "Owner/operator" means(~~(+÷~~

~~(a) Any person with any ownership interest in the facility or who exercises any control over the facility; or~~

~~(b) In the case of an abandoned facility, any person who had owned, operated, or exercised control over the facility any time before its abandonment;~~

~~The term does not include:~~

~~(i) An agency of the state or unit of local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title, unless that agency of the state or unit of local government has caused or contributed to the release or threatened release of hazardous substances from the facility; or~~

~~(ii) A person who, without participation in the management of a facility, holds identification of ownership primarily to protect the person's security interest in the facility))~~ any person defined as an owner or operator under RCW 70.105D.020(12).

~~((+11+))~~ (13) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, federal government agency, or Indian tribe.

~~((+12+))~~ (14) "Personal property" means property of any kind except real property. It may be tangible (having physical existence) or intangible (having no physical existence), such as patents, inventions, and copyrights.

~~((+13+))~~ (15) "Potentially liable person" means any person whom the department finds, based on credible evidence, to be liable under ~~((section 4 of the Model Toxics Control Act))~~ RCW 70.105D.040. The department shall give notice to any such person and allow an opportunity for comment before making the finding, unless an emergency requires otherwise.

~~((+14+))~~ (16) "Real property" means land, land improvements, structures, and appurtenances thereto, excluding moveable machinery and equipment.

~~((+15+))~~ (17) "Release" means any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances.

~~((+16+))~~ (18) "Remedy, remediation, or remedial action" means any action or expenditure consistent with the purposes of this chapter to identify, eliminate, or minimize any threat or potential threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of

a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

((~~(17)~~)) (19) "Solid waste management priorities" as defined in chapter 70.95 RCW are the priorities in the management of solid waste which should be followed in order of descending priority as applicable:

- (a) Waste reduction;
- (b) Recycling with source separation of recyclable materials as the preferred method;
- (c) Energy recovery, incineration, or landfill of separated waste;
- (d) Energy recovery, incineration, or landfill of mixed waste.

AMENDATORY SECTION (Amending Order 90-20, filed 9/4/90, effective 10/5/90)

**WAC 173-321-040 Applicant eligibility.** (1) Public participation grants may only be awarded to groups of three or more unrelated persons or to not-for-profit public interest organizations.

(2) All applicants must demonstrate their ability to appropriately administer grant funds.

(3) Applications for a hazardous substance release grant, including emergency grants, must include information on:

(a) The nature of the release or threatened release of the hazardous substance;

(b) The location of the release or threatened release of the hazardous substance;

(c) How the applicant group may be adversely affected by the release or threatened release of the hazardous substance;

(d) How the applicant group will promote public participation in the investigation or remediation of the release or threatened release of the hazardous substance;

(e) A complete project description;

(f) How the applicant group represents the environmental, health, and economic interests of individuals affected by the release or threatened release of the hazardous substance;

(g) The applicant group's history and experience, if any, in conducting activities similar to those described in the grant application;

(h) For emergency grants, a description of why an emergency exists, as defined in WAC 173-321-020(3); and

(i) Any other information specified by the department as

needed to award a grant.

(4) Applications for a waste management priorities grant must include information on:

(a) How the applicant group will promote or implement the state solid or hazardous waste management priorities;

(b) How the applicant group will promote public participation in the grant project described in the application;

(c) A complete project description;

(d) The applicant group's history and experience, if any, in conducting activities similar to those described in the grant application;

(e) Any other information specified by the department as needed to award a grant.

(5) The following persons or groups of persons shall be ineligible for grant funding:

(a) Any person potentially liable, as defined under RCW 70.105D.040;

(b) Local governments including any political subdivision, regional governmental unit, district, municipal or public corporation, including cities, towns, and counties. The term encompasses but does not refer specifically to the departments within a city, town, or county;

(c) Federal and state governments, or agencies thereof;

(d) Federally recognized Indian tribes, as a governing body. Individual tribe members of three or more persons are eligible to apply for a public participation grant;

(e) Organizations sustained by public funding;

(f) Public and private universities; and

(g) Any organization located outside of Washington state boundaries.

(6) Grant applications failing to qualify may be resubmitted.

AMENDATORY SECTION (Amending Order 90-20, filed 9/4/90, effective 10/5/90)

**WAC 173-321-050 Application evaluation criteria.** (1)  
Except for emergency grants which will be reviewed and evaluated by the department within twenty working days of receipt of the application, all other grant applications received will be reviewed and evaluated by the department within thirty working days after the close of the regular grant application period. Incomplete applications will not be evaluated. Applications will be ranked according to how each application meets the criteria set forth below. Grants will be awarded, within the limits of available funds, to the highest ranking applications. The department may fund all or portions of eligible grant applications.

(2) Priority consideration for public participation grant funding will be given to:

(a) Applicants requesting a hazardous substance release grant;

(b) New applicants; and

(c) Applicants that demonstrate the ability to provide accurate technical information on complex waste management issues.

(3) General criteria. All public participation grants will be evaluated against the following criteria:

(a) The type and extent of the applicant group's past history and experience conducting activities similar to those described in the grant application;

(b) The group's basic funding, with consideration given to groups with limited resources;

(c) The group's ability to appropriately manage grant funds;

(d) Except for emergency grants, if more than one group is interested in the same project, priority consideration will be given to groups who consolidate;

(e) Availability of funding sources for the project;

(f) Past performance under a public participation grant;

(g) The group's ability to define the environmental issue and identify what changes will occur in the problem as a result of the project; and

(h) Demonstration of the use of Bennett's hierarchy or similar methodology with a focus on outcome and clear commitment to follow through to end results.

(4) Special criteria.

(a) Hazardous substance release grants. Hazardous substance release grants, including emergency grants, will be evaluated against the following criteria:

(i) The degree to which the applicant group may be adversely or potentially adversely impacted by the release or threatened release of the hazardous substance, including but not limited to adverse or potential adverse impacts to surface and drinking waters, soils, flora or fauna, species diversity, air quality, property values, marketability of agricultural crops, and recreational areas;

(ii) The degree to which the applicant group represents the environmental, health, and economic interests of individual group members;

(iii) The degree to which the proposed project will promote public participation in the investigation or remediation of the release or threatened release of the hazardous substance.

(b) Waste management priorities grants. Waste management priorities grants will be evaluated against the following criteria:

(i) The degree to which the proposed public participation activity will promote or implement the state solid or hazardous waste management priorities;

(ii) The degree to which the proposed project will facilitate public understanding of the state solid and hazardous waste management priorities;

(iii) The degree to which the proposed public participation activities are consistent with or improve upon existing solid or hazardous waste management plans.

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**WAC 173-321-060 Eligible project costs.** (1) Eligible project costs for substance release grants shall include but not be limited to:

(a) Hiring technical assistants to review and interpret documents;

(b) Public involvement and public education activities;

(c) Reviewing specific plans for environmental testing and analysis, reviewing reports summarizing the results of such plans and making recommendations for modifications to such plans.

(d) Expendable personal property;

(e) Other public participation activities as determined by the department on a case-by-case basis.

(2) Eligible project costs for waste management priority grants shall include but not be limited to:

(a) Assisting in developing and implementing programs that promote or improve state or local solid or hazardous waste management plans;

(b) Assisting in developing programs or activities that promote and are consistent with the state solid or hazardous waste management priorities;

(c) Expendable personal property;

(d) Other public participation activities as determined by the department on a case-by-case basis.

(3) Ineligible projects and grant costs shall include but not be limited to:

(a) Independently collecting or analyzing samples at facility sites;

(b) Hiring attorneys for legal actions against potentially liable persons, facility owners, or the department. Applicants who receive a grant award shall notify the department if legal action is intended or taken on the subject of the grant project or application;

(c) Legislative lobbying activities;

(d) Real property;

(e) Nonexpendable personal property.

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**WAC 173-321-070 Grant funding.** (1) The department may fund up to one hundred percent of eligible project costs.

(2) The maximum grant allowance shall be ~~((fifty))~~ sixty thousand dollars.

(3) Public participation grants may be renewed annually. A new grant application must be submitted ~~((each year))~~ to be evaluated and ranked for additional funding.

(4) The department reserves the right to refuse funding to any and all applications failing to meet the grant eligibility criteria and may reopen the application period for additional applications.



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**WAC 173-321-080 Grant administration.** (1) The department shall establish grant application funding cycles each year.

(2) Public notice of application funding cycles shall be published state-wide.

(3) A grant application package will be sent to all persons interested in applying for public participation grants. Grant application packages will include notice of grant application deadlines, grant guidelines, and application forms.

(4) Grant applications will be evaluated by the department. To be funded, applications must include all required elements as outlined in the guidelines.

(5) The obligation of the department to make grant payments is contingent upon the availability of funds through legislative appropriation, and such other conditions not reasonably foreseeable which may preclude awarding such grants.

(6) The department, on at least a biennial basis, will determine the amount of funding available for public participation grants and establish an application and funding cycle. The minimum amount of money available for public participation grants established by the Model Toxics Control Act shall be one percent of the moneys deposited into the state and the local toxics control accounts.

(7) The department shall not be held responsible for payment of salaries, consultant fees, or other costs related to a contract of the grantee.

(8) To the extent that the Constitution and laws of the state of Washington permit, the grantee shall indemnify and hold the department harmless, from and against, any liability for any or all injuries to persons or property arising from the negligent act or omission of the grantee arising out of a grant contract.

(9) All grants under this chapter shall be consistent with ~~((the provisions of "Financial Guidelines for Grant Management" WDOE 80-6, May 1980, Reprinted March 1982, or such subsequent guidelines))~~ "Administrative Requirements for Ecology Grants and Loans" WDOE publication No. 91-18, revised October 2000.